William E Williams
3655 N Taylor Dr
Prescott Valley, AZ 86314
marketingbill@gmail.com
(816) 804-4162 (cell)

ARIZONA SUPERIOR COURT

YAVAPAI COUNTY

STATE OF ARIZONA,

Plaintiff,

Vs.

STEVEN CARROLL DEMOCKER,

Defendant,

No. P1300CR201001325
aka 20081339 (dismissed)

MOTION FOR RECONSIDERATION

MOTION FOR RELEASE OF RECORDS

MOTION TO PRODUCE OR LIFT GAG ORDER

MOTION TO PRODUCE EXHIBIT

MOTION TO EXCEED PAGE LIMIT

Intervener pro per, William E. (Bill) Williams, respectfully requests the Court take six actions: A) Allow Intervener to exceed page limits of this motion, set by the Rules of Procedure.

B) Reconsider its August 8th Order on Request of Records,

C) Release attorney-client-judge communications and documents regarding life insurance and financial records,

D) Grant Intervener's multiple requests for ex parte and *in camera* records,

E) Order the release of an exhibit held by the Defense,

F) Produce what the rumors in the community have identified as a "gag order" – preventing persons from discussing the case.

INTRODUCTION

Intervener is combining the multiple motions herein because the memoranda of law and argument covers all of these Motions like an umbrella of established law, and he respectfully requests the Court recognize the similarities, while taking judicial notice of Intervener's oral arguments, and previously filed memoranda of law, and list of authorities.

The argument and memoranda of law for "Reconsideration" overlaps "Release" which overlaps "Gag Order" which overlaps "Exhibit," but if Intervener must separate them, in an un-economic manner, then this Court will receive multiple motions, sent in multiple envelopes to multiple interested parties.

Most importantly, this is not about one ruling here or there; this is about multiple pleadings filed by this Intervener, and the Court should view them as a whole, cogent, lucid set of arguments rolled into one search for facts.

MOTIONS

A. Motion to exceed page limit. This Intervener has made a case for combining all motions in the interest of judicial economy, by way of his argument in the Introduction section above. If not combined, and if page limit under the Arizona Rules is not waived, then Intervener must file multiple motions (A-F) and make a request for hearings on all. If the Court waives the page limit requirement, it saves the Court time and money.

B. Motion for Reconsideration.

i. Presiding Judge David Mackey ruled on August 8th that some records requested by Intervener would be released by August 31st citing Rule 123, but Judge Mackey misapprehended the law under Rule 123, and misunderstood Intervener's request, and numerous other requests Intervener made under the purview of A.R.S. § 39-121 Inspection of Public Records, Rule 123, and other case law in both Intervener's February 7th request, and his proffered List of

Authorities. All of this should allow this court to release all documents requested of it. In addition, this Court should take notice of Intervener's oral arguments in two hearings (see Timeline enclosed) to understand why the Court should release all of the requested documents. Other legal argument and memoranda of law is offered throughout this pleading as a guide for the Court to release all records; see argument defining "public documents" on pages 14-16 below, offered to the Court so it can adequately reconsider.

ii. This Court errs in its reasoning on numbered paragraph 6 of Judge Mackey's narrative in the August 8th ruling in claiming redaction is necessary. The experts were utilized in the mistrial and may not be called for the new trial; it's "old news" as a journalist might say, but the true value in providing a clean, un-redacted copy goes to the heart of this Intervener's oral argument where he clearly stated the public has the right to know and journalists are the conduits to the public. Transcribe my oral argument, read it and post it.

iii. My same argument applies to numbered paragraph 9 of Judge Mackey's – and he should release the documents so the public knows what was said and what costs were incurred. Most of us are tax payers and some of us are conduits of information to the public. Perhaps the Court needs a committee comprised of an editor from the local newspaper, as well as legal scholars to help make the right decision. In the very least, the Court should report the content of the discussions in item 9; no self respecting journalist wishes to disclose identities of innocent people or jurors, but we demand to know what was said.

iv. The same argument applies to the redaction of item 12 in Judge Mackey's ruling. This journalist has pieced together a mosaic of facts discovered in sworn testimony, documents and motions filed by both sides; no rocket scientist is needed to determine who said what; the Court allows people to slip names into transcripts all the time. For months sheriffs, prosecutors, defense attorneys and this Court refused to identify several witnesses, (such as Charlotte

DeMocker's boyfriend, or James Knapp's children, or who Darko Babic and other experts names were) but then, low and behold, we receive copies of transcripts and reports showing all their names. Let's not be silly or naive. We seek confirmation, as any good journalist would, but we need the record to make the confirmation in order to print the story. So, unseal it and don't redact it.

v. And the same rationale in pages 2-3 above applies to the Judge's narrative in item 13 of the August 8 Order. Release the document.

C. Release life insurance and financial records. Former defense attorneys for Steven DeMocker: John Sears, Larry Hammond and Anne Chapman (herein referred to as The Dream Team) may have received $770,000 in proceeds from the ill-gotten life insurance policies of the murder victim – Carol Kennedy. And if the current F.I.N.R.A. investigation and arbitration is correct, another $1 million was taken from unsuspecting Prescott customers of DeMocker's stock brokerage and also given over to the Dream Team… or someone.

If so, this placed the Court in the dubious position of authorizing a tax payer funded public defender for the accused – Steven DeMocker – at a time the financial accounts of the Dream Team may have been over-flowing.

Intervener requested a copy of Mr. Sears' records from the Arizona Supreme Court Clerk, regarding his removal from this case, but the Clerk instructed Intervener to request them from Yavapai County Superior Court because "Yavapai sealed the file." The request is hereby made.

This intervener demands financial accountability from this Court and of the Dream Team, and this motion is one to compel the production of documents, evidence, exhibits, and testimony (taped or transcribed, sealed or otherwise) showing how the ill-gotten life insurance money went from the insurance company to Katie DeMocker, Steven DeMocker, Charlotte DeMocker, one or

two of Mr. DeMocker's girlfriends/co-workers, and Ruth Kennedy and then on to the Dream Team – and into which accounts the money still resides. The Court has this information in its ex-parte and *in camera* records. This motion seeks to compel the Court to produce a record showing when the Court knew and what it knew about the acquisition of funds and possible shifting of funds. This motion also demands specific reasons be revealed why Mr. Sears quit the case. This can be accomplished by the release of records.

We know, by sheriff's testimony, agency investigations, and other testimony and evidence, that Mr. DeMocker and his girlfriend/co-worker demanded the proceeds from the life insurance company, and we know they got the proceeds released – which normally does not happen when a life insurance company is investigating a suspicious death. In addition, other funds were procured from unsuspecting rubes, and moved around. But we need the Court to release the documents, so we have thorough attribution and tax payer accountability.

The suspicious nature of moving various county judges on and off this case, especially those holding ex parte and *in camera* hearings – some with stenographers taking notes – does not pass the smell test and raises the obvious question: will this court release what the judges know about DeMocker's funds?

ARGUMENT

It is hard to comprehend why a judge would approve tax payer dollars being used for a defendant who has allegedly shifted $1.77 million to hidden accounts when that money could be used for his defense or the maintenance of his children. It is hard to believe any Dream Team could "burn through" that much money, especially when providing such a short defense in this case. These issues are being rumored in the County, mentioned in the Prescott Daily Courier newspaper and are fodder for my new reports.

This Court and the Prosecutor's office have allowed this Intervener access to trial documents, evidence, testimony and exhibits, and this Intervener has published facts about this case based on those records. As a tax payer and writer, I demand access to the requested items above because all taxpayers of Yavapai County deserve the accountability, and, as has been well pleaded in this Court, I and other reporters are the conduits of information to readers/taxpayers who wish the same accountability.

Intervener requests the Court opine on its position of releasing documents and its role in knowing about the disbursement of funds. If the Court authorized any shifting of funds, even during ex-parte in-chambers hearings, then it has a duty of disclosure owed to Yavapai County residents who are paying the judge's salary, prosecutors' salaries, and the defense team's salaries. Your local constituents deserve to know what improprieties may have been committed by the Dream Team and even the judges.

THE DOCUMENTS ARE NOT PROTECTED BY ATTORNEY-CLIENT PRIVILEGE

Before the Court and The Dream Team jump on the "privilege band wagon," let me deflate the tires. We know Sears will use attorney-client privilege as a defense to not showing up for questioning because defense attorney Williams said so in his July 29, 2011 filing.

MEMORANDA OF LAW WITH ARGUMENT

1. The privilege between attorney and client takes flight if the relation is abused. A client who consults an attorney for advice that will serve him in the commission of a fraud receives no help from the law. He must let the truth be told. To drive the privilege away, there must be prima facie evidence that it has some foundation in fact. When that evidence is supplied, the seal of secrecy is broken. No showing of a conspiracy is required. The attorney may be innocent, and still the guilty client must let the truth come out. Clark v. United States, 289 U.S. 1; 53 S. Ct. 465; 77 L. Ed. 993, (1933); the attorney-client privilege was not created to shield clients from

charges for fraudulent conduct, and a client who abuses the attorney-client relationship waives the attorney-client privilege. *Id.* To determine if The Dream Team and DeMocker exhibited fraudulent conduct or abused the relationship, we must open up the records this Intervener seeks herein.

2. Not every communication between an attorney and client is privileged. See United States v. Larouche Campaign, 841 F.2d 1176, 1180 (lst Cir. 1988) (citing United States v. Nixon, 418 U.S. 683, 710 (1974) for proposition that generalized interest in invoking privilege for confidentiality will not outweigh specific need for particular evidence); and the attorney-client privilege is therefore "strictly confined within the narrowest possible limits consistent with the logic of its principle." Granted, Larouche and Nixon prosecutors were taking on odd-ball politicians, but the federal courts said information about payment of legal fees generally is not privileged. Lefcourt v. United States, 125 F.3d 79, 86 (2d Cir. 1997); Vingelli, 992 F.2d at 454. Some courts have further limited the privilege, and ordered disclosure of attorney's observations of the client's expenditures, income-producing activities, and life-style. Granted, *Lefcourt* and *Vingelli* are federal cases from the Northeast, but they are instructive because the Courts ruled disclosure of the transmission of funds is not barred by privilege. What this Intervener seeks is records showing The Dream Team's observations, DeMocker's income producing activities, what he spent on his exorbitant lifestyle, and whether funds were moved around (i.e. transmitted) – none of which is barred by privilege.

3. But when a defense attorney is also guilty, under the "crime-fraud exception" to the attorney-client privilege, no protection attaches to communications that reveal a client's intention to engage in criminal behavior. This exception depends upon the client's intent, and thus applies regardless of the attorney's actual or constructive knowledge of the crime. See United States v. Laurins, 857 F.2d 529; 1988 U.S. App. LEXIS 12214. This Ninth Circuit case hits closer to

home turf and is on point since *Laurins* was the managing director of a corporation under IRS investigation for an alleged abusive tax shelter. Testimony in this dismissed case indicates DeMocker is suspected of being investigated by federal or quasi federal agencies and had his own "book of business," i.e. his "own corporation." The *Laurins* court said: the attorney-client privilege does not protect communications between an attorney and client which further a crime or fraud. To determine what was said between The Dream Team and DeMocker in furtherance of a crime or fraud, this Court must open the documents this Intervener requests.

4. To determine whether the crime-fraud exception applies, most courts invoke a two-pronged test requiring: (i) a prima facie showing that the client was involved in or was planning criminal behavior when he sought legal advice, or that the client committed the crime or fraud after receiving counsel's advice, and (ii) proof that the client obtained legal advice to further criminal or fraudulent activity. Courts have discretion to hold an *in camera* hearing to determine if the crime-fraud exception applies. The party seeking to invoke the exception must "present evidence sufficient to support a reasonable belief that *in camera* review may yield evidence that establishes the exception's applicability." United States v. Zolin, 491 U.S. 554; 109 S. Ct. 2619; 105 L. Ed. 2d 469; (1989). This Ninth Circuit case allows this Intervener to stand on the records of this case (sheriffs testimony, the judges' own orders, arguments by prosecutors and admissions by the attorneys) which in and of themselves create the prima facie showing required. So, what this Intervener is saying is that we want all of the sealed documents and sealed transcripts released and that if this Court wants to conduct an *in camera* review of those documents before it releases them, it can do so. And it can do so without destroying attorney-client privilege. See Zolin, 491 U.S. at 556-57, 569.

5. The actions of Defense attorney John Sears essentially waived privilege by breaking the law and describing the facts in his demand to the Supreme Court to let him off the case.

Attorney-client privilege is merely an evidentiary rule, and an argument for privilege by Mr. Sears would fail under Twin City Fire Insurance Co. v. Burke, 204 Ariz. 251, 63 P.3d 282 (2003). If the Court and Mr. Sears would like to produce the documents, alongside Mr. Sears' request to leave the case, then we can all determine if privilege rides. But we cannot make the determination until we see the records.

6. Arizona has its own test for this Court to take – to be privileged, a communication must meet four criteria: (1) it originates in a confidence that it will not be disclosed, (2) confidentiality is essential to the full maintenance of the relationship between the parties, (3) the relationship is one that the community believes should be fostered, and (4) the injury to the relationship that would occur from disclosure would be greater than the benefit gained by the aid given to the litigation. Humana Hosp. Desert Valley v. Superior Court, 154 Ariz. 396; 742 P.2d 1382. A Court argument, or The Dream Team's argument, for privilege fails under that four-prong test in *Humana*.

7. The attorney-client privilege may be subject to waiver when the content of a confidential communication is disclosed to a third person with no legitimate need to know the information, even in some instances where the disclosure is inadvertent. In the Jarrell Report, we learned that dozens of people - with no legitimate need to know - viewed confidential communication (i.e. the sealed documents). Police officers, family members, opposing counsel and friends became aware of the content of the confidential communications, therefore the privilege is waived, and the documents sought by Intervener should be released.

8. The [attorney-client] privilege does not extend to underlying factual information that may come out during the course of the communication, unless that information is contained within a privileged communication. What communication occurred that made attorney Sears conclude he committed an "unwaivable conflict of interest" which he spoke of during his in-

court swan song – that last day he appeared? We won't know until the Court releases the details of the communication, and Sears' filings in the Supreme Court. That will determine if privilege exists.

9. It is a matter of law that communications made in non-private settings, or in the presence of third persons unnecessary to accomplish the purpose for which the attorney was consulted, are not confidential, and therefore are not protected by the privilege. Was the disclosure made in front of a sheriff? In a jail cell? Were Katie or Charlotte DeMocker present, without an attorney when the disclosure was made? What about the day – not long after the murder – when The Dream Team, DeMocker, the two daughters, the victim's former art colleagues, the victim's former counselor colleagues, and family friends met at the murder scene (Carol Kennedy's house on Bridle Path Road) – a murder scene still soaked in the blood of the victim; what was the content of all of those communications made with multiple third parties roaming through the crime scene? And what did the *in camera* accounts of all third party communications reveal to the Judge(s) [Lindberg and Darrow]? If those communications occurred, the privilege is toast. But we won't know until this Court opens those transcripts and their companion documents.

10. The Dream Team and Mr. DeMocker disclosed attorney-client communications to a personal accountant, outside auditor and investment banker (all of whom spoke to that fact while deposed, or interviewed by sheriffs, or stated in court, or referred to in court) and because of that, privilege is waived. The Dream Team swapped business/financial advice with Mr. DeMocker, so privilege is waived. Mr. DeMocker may have sought a new trial or other relief based upon ineffective assistance of counsel, but we need the sealed documents to be certain. See *Sixteen Ways to Waive Privilege*, governmentcontractslawblog.com.

11. The attorney-client privilege does not extend to communications made in connection with a conversation about the commission of a criminal or fraudulent act, and because we don't know why Mr. Sears quit the case – because the Court won't release the documents, I am hereby declaring that privilege was lost when Mr. Sears and Mr. DeMocker discussed the commission of criminal or fraudulent acts such as the fraudulent email, and Sears' knowledge of it; "hiding the golf club cover" (cover of the suspect murder weapon) in Sears' office; and "moving funds around." All it takes is a "discussion" – not the act discussed – to waive privilege.

12. A client's statement of intent to commit a crime is not deemed privileged, even if the client was not seeking advice about how to commit it. The attorney-client privilege is ultimately designed to serve the interests of justice by insulating attorney-client communications made in furtherance of adversarial proceedings, but in this case The Dream Team's adversarial proceedings are done, over, caput. Bad faith action can waive attorney-client privilege. See State Farm Mut. Auto. Inc. Co. v. Lee, 199 Ariz. 52, 13 P.3d 1169 (Ariz. 2000), and the *Encyclopedia of Everyday Law*, "Privilege" section.

13. "The burden of establishing the privilege rests with the client or with the party objecting to the disclosure of the communication." 54 Ala. L. Rev. 241; citing McGriff v. State, a capital murder trial. If that works in Arizona, then The Dream Team, or this Court, must establish the privilege; in other words, defeat my argument herein.

14. The [attorney-client] privilege exists only to aid in the administration of justice, and when it is shown that the interests of the administration of justice can only be frustrated by the exercise of the privilege, the trial judge may require that the communication be disclosed. Attorney-client privilege is not absolute. Rules of Professional Conduct allow an attorney to disclose confidential information when permitted under the Rules of Professional Conduct or required by law or court order. See: 25 Campbell L. Rev. 235. Multiple judges held

communications, sometimes ex-parte, many times in chambers, and now it's time to release those transcripts. Sears told the Arizona Supreme Court why he quit; Darrow sealed those reasons, but it's now time to show us tax payers. We want all of these forms of communications because we paid for them, the public has the right to know, and privilege won't shield them.

15. The new and old defense team cannot use "reliance on counsel" in stating a privilege defense. They have to rebut a showing of criminal intent and willfulness. But they can't if they don't share the contents of the documents. Reliance on counsel must be reasonable and preceded by full disclosure by the client to counsel. Did DeMocker fully disclose criminal acts or intent to the defense team? Reliance on counsel only vitiates unlawful intent and indicates nothing about whether the defendant possessed any knowledge of facts constituting the fraudulent activity. Was the fraud The Dream Team's or DeMocker's. A defendant who uses this defense waives his attorney-client privilege with that counsel. In short, the defendant may not use the privilege as both a shield and sword. See United States v. Bilzerian, 926 F.2d 1285, 1292-93 (2d Cir. 1991) (prosecution was free to inquire into attorney-client communications that might have otherwise been protected under attorney-client privilege). Bilzerian was a Securities and Exchange Commission investigation case, much like this one, although in this case we have a F.I.N.R.A. investigation regarding securities fraud. The Dream Team knew of DeMocker's securities violations and now it's time to tell the tax payers, especially those injured parties in the investigation of UBS and DeMocker. In re von Bulow, 828 F.2d at 103: fairness considerations arise when the party attempts to use the privilege both as "a shield and a sword." In other words, a party cannot partially disclose privileged communications or affirmatively rely on privileged communications to support its claim or defense and then shield the underlying communications from scrutiny by the opposing party.

16. There is another test, instructive for this Court: In order for a privilege defense to be successful, the defendant must show: (1) a request for advice of counsel regarding the legality of the proposed action (fraudulent email, golf club cover, moving funds, securities fraud); (2) full disclosure of all relevant facts to counsel; (3) assurance by counsel of the action's legality; and (4) good faith reliance on counsel's advice. If Sears violated the law or compromised his ethics, then he and DeMocker fail this four prong test. There is no privilege defense that counsel failed to discover any proof of wrongdoing. The Prosecutor and I need not "ferret out proof of wrongdoing." Our own interests in the activity alleged to be in violation renders the defense unavailable. In addition, the defendant must actually have relied upon the advice given. Did The Dream Team provide "Violator DeMocker" with advice that he chose to accept or ignore? See: 36 Am. Crim. L. Rev. 1095. To answer that question, we must depose Sears or see the sealed documents.

17. Some courts have determined the protection of attorney-client privilege extends only to communications and not to facts. A fact is one thing and a communication concerning that fact is an entirely different thing. The client cannot be compelled to answer the question, "What did you say or write to the attorney?" but may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communication to his attorney. See Upjohn Co. v United States, 449 U.S. 383, 395 (1981). The facts are hidden in the sealed and *in camera* documents and this Intervener wants those facts released.

18. Underlying facts similar to State v. DeMocker occurred in State v. Tracy Allen Hampton, 208 Ariz. 241 (2004): The court ordered sealed materials be unsealed for review by the court and its professional staff. If Judge Darrow wants to review all sealed records before he gives them to me, that's fine. Of particular note is that the public defender was involved with *Hampton*, so let's remember that public Defender Trebesch was involved in this case, for

however brief it does not matter. He saw the files. And the Jarrell Report, Judge Darrow's own secretary's findings, and Judge Mackey's "color chart" show a frenzied swapping of sealed documents by dozens of people. The *Hampton* Court unsealed the materials "for all purposes," including for use by law enforcement in considering future criminal proceedings, and presumably for interested journalists. Although the *Hampton* Court sealed materials derived from alleged communications between the accused and counsel, they were appropriately disclosed. See Ariz. R. Sup. Ct. 42, ER 1.6(b) (A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal act...")

In DeMocker, we allege that he and counsel were committing a crime, or knew of the fraudulent email, golf club cover, moving funds around, or the potential federal fraud. In *Hampton*, the Court dealt with a facsimile sent to the Public Defender. Here we have an email sent to the Sheriffs. In both cases, any potential privilege is waived by disclosure of communication – especially to third parties. See Ulibarri v. Superior Court, 184 Ariz. 382, 385, 909 P.2d 449, 452 (App. 1995) (a client waives the [attorney-client] privilege by disclosing confidential communications to a third party"); Restatement (Third) of The Law Governing Lawyers § 79 (2000) ("The attorney-client privilege is waived if the client . . . voluntarily discloses the communication in a non-privileged communication.) In this case, communicating about crimes that both parties are committing or know about is non-privileged. Notice the verb usage in *Ulibarri* and *Restatement (Third)*: privilege is waived! In other words, DeMocker has no choice; Sears has no choice; it has been waived for them, via their own acts.

19. In State Farm v. Judge Kenneth Lee of the Superior Court of Pima County, 199 Ariz. 52 (2000), we learned that when someone makes factual assertions in defense of a claim which incorporate, expressly or implicitly, the advice and judgment of its counsel, it cannot deny a party an opportunity to uncover the foundation for those assertions in order to contradict them.

For this Intervener to "uncover," for our county prosecutor to "uncover," we must see the documents. *State Farm* said conversations with counsel regarding the legality of schemes would have been directly relevant in determining the extent of knowledge and, as a result, intent. Citing *Bilzerian* 926 F.2d at 1292; see also Cox v. Administrator U.S. Steel & Carnegie, 17 F.3d 1386, 1418 (11th Cir. 1994) (once defendant injects defense that it intended to comply with law and acted in accord with its knowledge of law, it waives attorney-client privilege); Apex Municipal Fund v. N-Group Securities, 841 F. Supp. 1423, 1431 (S.D. Tex. 1993) (finding waiver once defendant injects its own understanding and interpretation of law in denying fraudulent intent). So, what scheme did DeMocker discuss, what was his intent, did he realize it was lawful or unlawful? Did DeMocker and The Dream Team discuss fraudulent intent, or how to comply with the law? Under *State Farm*, and *Cox* and *Apex*, we don't know until the court reveals the facts – the records sought by this Intervener.

Because of my challenges in this Motion, the Court and the Dream Team stand accused, and, as a matter of law, their only remedy is to prove innocent, harmless error is by unsealing documents. If both of them can defeat all of the numbered paragraphs above, then they are the victors. But they cannot defeat the arguments without unsealing the documents.

Because of the foregoing, there exist no protected documents, no attorney-client privilege, so this Court must provide copies to this Intervener of all ex parte and *in camera* documents and stenographic notes about financial discussions between the Dream Team and Mr. DeMocker AND the sealed reasons why the Dream Team went to the Supreme Court to be removed from this case.

ADDITIONAL MOTIONS

D. Release all of the records Intervener has requested going back to his initial October 2010 Motion. "Public documents" means Public Documents. The late Hon. Thomas Lindberg's February 10, 2009 Order in this case says: release documents to the media expeditiously. The Order has not been set aside. Hon. Warren Darrow's June 30, 2011 Order essentially labels Mr. DeMocker "an indigent defendant" in his discussion on Rule 15, and states the 15.9 sealed documents will remain sealed. This Intervener has asked in Court and requested by Motion – numerous times – that this Court opine on why reporters may not have documents, but this Court has failed to honor those requests.

A.R.S. § 39-121, Inspection of Public Records, has been argued in this case as being one of the controlling statutes which allow the release of information. Under that statute this Court is REQUIRED to release the items I request, or opine on why it won't.

The Arizona Attorney General's deputy waded into this controversy and stated Arizona Supreme Court Rule 123 is controlling in State v DeMocker – that records in this trial should be produced. In addition 123 (f)(4) *Delay or Denial; Explanation* states (A) The custodian is required to comply with any request for records, except requests that are determined to create an undue financial burden on court operations. I made a request of the records clerk and she directed me to ask Judge Darrow. Under Rule 123, (not necessarily just (f)(4), but the rule in total) this Court is REQUIRED to release the items I request, or opine on why it won't.

The Arizona Code of Judicial Administration aids this Intervener. In Part 1: Judicial Branch Administration, Chapter 6: Records; Section 1-606: Providing Case Record Access to Public Agencies and Public Purpose Organizations is also controlling here. Section 1-606 says this Court MUST provide access to case records or data that may exceed the access available to the general public provided by Rule 123… for scholarly, and journalistic purposes. I have written four term papers about this murder trial for my courses in Paralegal Studies at Yavapai College –

receiving a letter grade of A from my professors – all of whom are local attorneys. I have written six articles for freelance pay on this case. *IF* that is not scholarly and journalistic purposes under the definition of Section 1-606, *THEN* this Court must opine on why it would withhold documents. Under Section 1-606 this Court is REQUIRED to release the items I request so that I may author further reports.

It is well established that Interveners who share a financial interest in a case have the right to petition to know more about how their tax dollars are being spent and why some funds are not used. This requires a showing of the DeMocker money trail documents requested herein.

In addition, this Petitioner argued in court, and placed in motions, his theorem that he is being harmed financially by this Court's breach of the Commerce Clause, when he is prevented from reporting on sealed files, across state lines over the internet in his free lance articles written for examiner.com. Neither Judge Darrow nor any of the parties have disputed this. Petitioner personally has suffered an actual and threatened injury as a result of the putatively illegal conduct of the Court; the injury fairly can be traced to the challenged action; and that injury is likely to be redressed by a favorable decision.

The state (and The Dream Team) has the burden of overcoming the legal presumption favoring disclosure: London v. Broderick, 206 Ariz. 490; 80 P.3d 769 (2003) explaining how Ariz. Sup. Ct. R. 123 and A.R.S. § 39-121 mandate disclosure in this case.

Because of the foregoing, there exist no protected documents, so this Court must provide copies to this Intervener of all records he has requested dating back to his original October 2010 Motion.

E. Motion to Produce Exhibit. This Intervener asked the County Prosecutor's office for a copy of what has been labeled in court testimony as "Exhibit 73" or "The Book of Business" – Steven DeMocker's stockbroker records which were argued to be part of the divorce settlement

between he and Carol Kennedy, and also used to establish a crooked predilection on the part of DeMocker during the murder trial. The prosecutor's office instructed this Intervener to ask the defense team for the exhibit because it was theirs, and exhibits were returned after the mistrial. So, this Intervener made the same request of Mr. Parzych and Mr. Williams. The request was ignored. Intervener hereby requests this Court order the defense team to supply a scanned copy to be forwarded to Intervener on disc, or a printed copy.

F. Motion to produce "Gag Order." Persons in Yavapai County, and counties outside of Arizona, are operating under the assumption that this Court entered an Order preventing them from discussing this case. No "gag order" exists in the on-line catalog of all scanned documents in this case, and Intervener hereby requests this Court produce one, or render an opinion why none exists.

Granted, in this trial record there are multiple references, transcripts, motions and Judge statements describing "*exclusion of witnesses, meaning you cannot speak with other witnesses*," but Intervener can find no "Gag Order."

"Each passing day [of a direct prior restraint] may constitute a separate and cognizable infringement of the First Amendment," an infringement that would be "irreparable." Nebraska Press Assn. v. Stuart, 423 U.S. 1319, 1327 (1975). A system of prior restraints of expression bears a heavy presumption against its constitutional validity. Hence, the government carries a heavy burden of showing a justification for its imposition. Better Austin v. Keefe, 402 U.S. 415, 419, 29 L. Ed. 2d 1, 91 S. Ct. 1575 (1971).

TIMELINE – an aide to the Court

On October 7, 2010 Intervener motioned the Court to designate him as an interested party, mostly for Freedom of the Press reasons and Public Right to Know reasons. Although the Court was gracious in designating him as "Intervener," the Court never fully addressed his requests, including a companion October 2010 request to open court documents to him in the State v. DeMocker case.

On November 22, 2010 Intervener filed with the Court, a List of Authorities as an aide to the Court and also a way to economize the Court's time. Intervener includes that as **Attachment 1** to this Motion because it appears lost, not being posted on the Court's website.

On November 23, 2010 Intervener was allowed to argue in court (in Camp Verde, before Judge Darrow) all of his cogent arguments (with citations) for the public's right to know and freedom of the press, concluding at the end of his argument that the Court must release the documents.

Intervener's December 3, 2010 letter to Court Clerk Jeanne Hicks and Judge Darrow was, essentially, a legitimate records request but was not acted upon.

Winter 2010-2011. The Clerk posted this Intervener's Motion in the James Arthur Ray – "Sedona sweat lodge manslaughter" – file. Intervener sent an angry letter to Clerk Jeanne Hicks. The document was eventually moved over to the DeMocker case file.

Intervener's December 8, 2010 Motion for Clerk to Post Documents pointed out poor records retention policies and procedures of the Court Clerk and included, once again, a sound argument (with citations) for the public's right to know and freedom of the press issues; the court ordered the clerk to clean fix her procedures.

Intervener's December 10, 2010 Motion to Release Documents included a cogent argument for the public's right to know and freedom of the press; the court did not entirely address the issues in the Motion.

Intervener's December 29, 2010 Complaint regarding withholding of documents was summarily dismissed by the Court.

There was a dismissal of the case. Then there was a new indictment.

There was apparent confusion and inefficiency in the Clerk's filing of three different case numbers on State v. DeMocker (or State v. DeMocker plus his daughter and girlfriend).

Intervener's January 24, 2011 Response to Prosecutor's filing, and Response to Attorney General's filing, included a request for records; the court did not address all the issues in the Response, but did (in its February 1 Order) order the Clerk to post some documents on the website.

Intervener's February 7, 2011 Request for Records complied with the Court's December 8 Order on how to request records, but the Court did not act on the Request until August 2011 and even then the court did not address all the issues in the Request.

Intervener's April 8, 2011 Motion for Clarification, included a request for records, and a statement incorporating Intervener's prior arguments and pleadings for the release of documents; the court did not entirely address the issues in the Motion.

Intervener filed a second April 2011 Motion and request for records with a deadline for special action; the Court's April 21, 2011 Order denied the request, claiming Intervener did not properly serve all parties; yet the Court only served the Order on 4 parties, not the 15 people on the

Court's own routing slip. And while simultaneously denying the Motion, the Court actually acted on it when it said, "both cause numbers are currently active" which was in and of itself part of the Intervener's motion.

There were three investigations in Spring-Summer 2011, one by Judge Mackey, one by Judge Darrow's clerk, and one by investigator James A. Jarrell of the county prosecutor's office. Inferences from all three were that numerous records were obtained improperly by numerous parties.

Intervener's May 2011 Motion showed that Judge Darrow did not hold a promised hearing on the unsealing of records.

In early August 2011 the Court said it would release 11 of 13 documents requested in Intervener's February 7 Motion, but the Court said Intervener would have to wait until the end of the month to get those records, and only if other parties didn't successfully challenge the release.

Intervener's August 2011 letter to defense team Parzych and Williams (requesting the *Book of Business*) fell on deaf ears.

Evidence of inefficient document retention continues to this day on the Court's public website as **Attachment 2** indicates: if you click on a document because the title appears to be a helpful document, another different document pops up on the screen.

SUMMARY

This Intervener has standing to apply for a writ of mandamus. See CBS Inc. v. Young, 522 F.2d 234 (6th Cir. 1975). In Arizona, this is called a Special Action. This Court has 21 days to make favorable rulings on these Motions; if not, the Intervener will file his Special Action.

REQUEST FOR RELIEF

For the foregoing reasons, Petitioner respectfully moves the Court to:

1. Allow Intervener to exceed page limits with this motion and attachments, as allowed by the Rules of Procedure.

2. Reconsider its August 8th Order on Request of Records, and release all documents requested. Absent substantive challenges, mail the documents on a disc to Intervener.

3. Release attorney-client-judge communications and documents regarding life insurance and financial records, most of them residing in sealed form, ex parte and *in camera*; some taken by stenographic notes.

4. Act on Intervener's multiple requests (dating back to October 2010) for ex parte, sealed or *in camera* records, some taken by stenographic notes; provide all documents, exhibits, evidence, testimony or transcribed communications requested herein.

5. Order a copy of *The Book of Business* be given to Intervener, by the defense team.

6. Produce the gag order, define it, or lift it.

7. Or, if any of these Motions are denied, issue a findings of fact and conclusions of law REQUIRED of this Court under Arizona law, for each request.

Respectfully Submitted

William E Williams

William E. (Bill) Williams
Intervener pro se
3655 N Taylor Dr
Prescott Valley, AZ 86314
(928) 227-2438
(816) 804-4162 cell

I certify that a copy of the foregoing is being delivered in person, by mail or email to:

Hon. David Mackey
Hon. Warren Darrow
Victim Services Division
Daniela De La Torre, Attorney at Law, 245 W. Roosevelt, Suite A, Phoenix, AZ 85003
Melody G. Harmon, Attorney at Law, 210 S. 4th Ave., Suite 220, Phoenix, AZ 85003
Chris Moeser, Esq., 201 E. Washington Street, Suite 1600, Phoenix, AZ 85004
John Napper, Esq., 634 Schemmer, Suite 102, Prescott, AZ 86305
Craig Williams and Gregory Parzych, 3681 North Robert Road, Prescott Valley, AZ 86314
Jack Fields, Yavapai County Prosecutor's Office
John Sears, P.O. Box 4080, Prescott, AZ 86302
Anne Chapman & Larry Hammond, 2929 N Central Ave, Phoenix, AZ 85012

William E Williams

William E. (Bill) Williams

ATTACHMENT 1

ARIZONA SUPERIOR COURT

YAVAPAI COUNTY

STATE OF ARIZONA,

Plaintiff,

Vs.

STEVEN CARROLL DEMOCKER,

Defendant,

No. P1300CR20081339

LIST OF AUTHORITIES

As an aid to the Court, Petitioner pro se, William E. (Bill) Williams, offers this List of Authorities in advance of his November 23 argument to unseal court records.

LIST OF AUTHORITIES

Freedom of the press is a fundamental personal right which is not confined to newspapers and periodicals. Branzburg v. Hayes, 408 U.S. 665.

"The core purpose of the public records law is to allow the public access to official records and other government information so that the public may monitor the performance of government officials and their employees." Lake v. City of Phoenix, 222 Ariz. 547, citing Griffis v. Pinal County, 215 Ariz. 1 and Phoenix Newspapers, Inc. v. Keegan, 201 Ariz. 344.

Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 495, 95 S.Ct. 1029, 1046, 43 L.Ed.2d 328 (1975): Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media; the freedom of the press to publish that

information is of critical importance to our type of government in which the citizenry is final judge of the proper conduct of public business. U.S.C.A.Const. Amends. 1, 14.

KPNX-TV v. Superior Court In and For County of Yuma, 183 Ariz. 589: Police investigative reports are "public records" subject to the public records access statute. A.R.S. § 39-121.01

Associated Press v. Labor Board, 301 U.S. 103 (1937) at 128: Interstate communication of a business nature, whatever the means employed, is interstate commerce.

In Re Kansas City Star Newspaper, 346 Mo. 658; Bouvier's 2nd Law Dictionary (3 Ed.), p. 3307: The gathering of news, its preparation and transmission, involve transactions of ... business outside the state... which are productive of income."

Natl. Labor Relations Board v. Abell Co., 97 Fed. (2d) 954. "The Associated Press and North American Newspaper Alliance are instrumentalities through which the newspaper... conducts extensive business transactions outside of the state... citing: KVOS, Inc., v. Associated Press, 299 U.S. 272; Star-Chronicle Pub. Co. v. United Press Assn., 204 Fed. 221; Western Union Telegraph Co. v. Foster, 247 U.S. 112. The newspaper...would derive no income unless it gathered and printed the news. The circulation of newspapers and advertising outside of (the state) involves transactions of... business outside and partly within the state...which are productive of income. Post Ptg. & Pub. Co. v. Brewster, 246 Fed. 325; Konecky v. Jewish Press, 288 Fed. 181; Little v. Smith, 124 Kan. 237; State v. Salt Lake Tribune Pub. Co., 249 Pac. 475. The news dealers, distributors and carriers... are representatives of ... transactions...outside of the state... Caldwell v. North Carolina, 187 U.S. 632; Davis v. Commonwealth of Virginia,

236 U.S. 699; Rearick v. Pennsylvania, 203 U.S. 510; Swift & Co. v. United States, 196 U.S. 399; Taussig v. Mill & Land Co., 124 Mo. App. 216; Street v. Werthan Bag & Burlap Co., 198 Mo. App. 350, 200 S. W. 739; State v. Kramer, 206 Mo. App. 53, 226 S. W. 643. A newspaper's advertising (business) involves transactions performed partly in state ... and partly out of state... which are productive of income. Indiana Farmers Guide Publ. Co. v. Prairie Publ. Co., 293 U.S. 276; International Text Book Co. v. Pigg, 217 U.S. 91; International Text Book Co. v. Gillespie, 229 Mo. 413.

Stewart v. Rolling Stone LLC, 38 Media L. Rep. 1208: "...the magazine was engaging in commerce when publishing the article.

Petitioner respectfully requests the Court accept this List of Authorities as an aid to the Court and to economize the Court's valuable time during the November 23, 2010 hearing.

Respectfully Submitted

William E. (Bill) Williams
Petitioner pro se
824 W Gurley St
Ste 129
Prescott, AZ 86305
(928) 227-2438
(816) 804-4162 cell

I certify that a copy of the foregoing was delivered to Defendant's attorney, Western Newspaper Inc's attorney, and the Yavapai County Attorney.

William E. (Bill) Williams

ATTACHMENT 2